

# Fuel Industry (Improving Fuel Resilience) Amendment Bill

Government Bill

## Explanatory note

### General policy statement

The Fuel Industry (Improving Fuel Resilience) Amendment Bill (the **Bill**) provides a statutory framework for implementing the Government’s fuel resilience policy package announced in November 2022. This package aims to allow the Government to take an adaptive approach to adopting fuel resilience measures over time and ensure that New Zealand has adequate fuel stocks to mitigate the risk of plausible fuel disruptions, which may result from international or domestic events.

The Bill aims to strengthen the resilience of fuel supplies in New Zealand. As sectors ranging from freight services to building and construction are dependent on fuel supplies for day-to-day operation, the Bill will also contribute to New Zealand’s economic security.

A key component of the Bill is the introduction of a minimum fuel stockholding obligation (**MSO**) on fuel importers with the right to draw fuel from bulk storage facilities<sup>1</sup> in New Zealand (**obliged persons**). The MSO reduces the risk that fuel stockholding, and therefore fuel supply resilience, could deteriorate as a result of international geopolitical events, the closure of the Marsden Point oil refinery, and changing commercial incentives for the fuel industry to invest in fuel supply infrastructure in light of the clean energy transition. During the initial period of implementing the MSO, the MSO will apply only to fuel importers with the right to draw fuel from bulk storage facilities. Small fuel industry participants without access to bulk storage facilities are not intended to be subject to the MSO.

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<sup>1</sup> Under the Fuel Industry Act, a bulk storage facility is defined as a facility for the storage of 5 million litres or more of engine fuel.

The definition of the obliged persons may be amended by regulations in the future, should there be significant changes to fuel supply chains. For example, if a sizeable production plant of green fuels is developed in New Zealand, it may be desirable to impose stockholding requirements on the fuel producer and possibly the fuel wholesaler suppliers who directly acquire fuels from that fuel producer. Nevertheless, fuel importers with the right to draw fuel from bulk storage facilities are expected to remain obliged persons until they exit the New Zealand fuel market.

### **Minimum stockholding requirement will provide more certainty and lessen fluctuations in fuel stock level**

The Bill creates an obligation on fuel importers with the right to draw fuel from bulk storage facilities in New Zealand to hold prescribed levels of stocks of diesel, petrol, and aviation kerosene (jet fuel). During the initial period (which continues until the MSO is reviewed and amended through regulations), the total stocks each obliged person must hold are equivalent to at least:

- 28 days of consumption<sup>2</sup> for petrol on average:
- 24 days of consumption for jet fuel on average:
- 21 days of consumption for diesel on average.

The minimum stockholding requirement for the initial period has been developed to avoid disproportionate economic impacts, minimising flow-on impacts on fuel prices, and the risk of stranded bulk storage assets in light of the expected decline in petrol and diesel in the coming decades.

The calculation method for determining required average minimum stockholding volumes of obliged persons is set out in the Bill. The calculation method is designed to provide certainty about the minimum stockholding level that obliged persons will be required to achieve. It will also accommodate some fluctuations in stockholding level, although the fluctuations are expected to be smaller after the MSO is implemented.

Obliged persons will be able to enter into entitlement agreements with each other, which will allow the transfer of the right to count an amount of fuel stocks for compliance with the MSO from one party to another. This will give obliged persons more flexibility in how they meet their obligations, particularly when they experience short-term disruptions to their fuel supply chains or face temporary fuel storage constraints.

### **The Bill enables adaptive approach to managing fuel supply risks**

The Bill sets out the framework for exempting obliged persons from the MSO, based on a set of criteria. This reflects that there will be exceptional circumstances where it would not be reasonable or beneficial for New Zealand to expect fuel wholesalers to

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<sup>2</sup> The number of days of consumption means how many days the fuel stocks will last to meet expected normal demand.

comply with the MSO. Examples of such circumstances include a natural disaster or a manmade event significantly affecting international fuel supply chains or reducing the available bulk storage capacity. Exemptions will be secondary legislation, and publication requirements will apply to them.

The Bill provides for regulation-making powers to introduce new fuel stockholding requirements in the future, amend the calculation method for stockholding volumes, and specify requirements for disclosure of information in relation to resilience of fuel supplies in New Zealand. These powers will enable the Government to take an adaptive approach, over time, to adopting measures for managing fuel supply risks in light of transport and energy trends. In particular, the information disclosure requirements will enable better monitoring and information collection to provide clearer government oversight over fuel stocks, contingency arrangements, fuel storage capacity, and any potential vulnerabilities in the fuel supply chains for New Zealand at a granular level.

The regulator will be allowed to share information collected under the MSO regime with other public service agencies and statutory entities, as set out in the Bill. This will allow these organisations to cross-check information and use the information for emergency management and planning.

To enable enforcement of the MSO, the Bill includes provisions on penalties when it is breached. The Bill also provides for the discretion to accept enforceable undertakings from obliged persons in connection with any matter relating to the enforcement of the MSO. Such undertakings may take the form of payment to the regulator for reimbursement of legal costs associated with MSO breaches, or terms and conditions agreed by the parties (such as commitments to changing fuel stockholding practices or making infrastructure investments). These enforceable undertakings may be accepted for use in resolving investigations into potential breaches of the MSO, thereby avoiding lengthy enforcement proceedings seeking a punitive sanction.

### **Departmental disclosure statement**

The Ministry of Business, Innovation, and Employment is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2023&no=257>

### **Regulatory impact statement**

The Ministry of Business, Innovation, and Employment produced regulatory impact statements on 2 August 2022 and 21 April 2023 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of these regulatory impact statements can be found at—

- <https://www.mbie.govt.nz/building-and-energy/energy-and-natural-resources/energy-generation-and-markets/liquid-fuel-market/fuel-security-in-new-zealand/>
- <https://treasury.govt.nz/publications/informationreleases/ris>

### Clause by clause analysis

*Clause 1* is the Title clause.

*Clause 2* provides for commencement. The Bill will come into force by Order in Council after the necessary regulations have been made. Time is required to develop regulations on the MSO-related information disclosure requirements, and to allow obliged persons to put in place the administrative systems and operational arrangements (including fuel shipment orders) to comply with the MSO. The whole Bill must come into force no later than 2 years after the date on which it receives the Royal assent.

*Clause 3* provides that this Bill amends the Fuel Industry Act 2020 (the **Act**).

*Clause 4* relates to the purpose of the Act. The existing purpose of the Act is to promote competition in engine fuel markets for the long-term benefit of end users of engine fuel products. The purpose of the *new Part 4* being inserted by the Bill is to promote resilience of engine fuel supplies in New Zealand.

*Clause 5* ensures that the Act as a whole does not apply to certain reserve fuel.

*Clauses 6 to 12* partition off certain existing provisions of the Act so that they apply only to the existing Parts of the Act and not to the *new Part 4* being inserted by the Bill.

*Clause 13* inserts *new Parts 4 and 5*. *New Part 4* relates to the promotion of resilience of engine fuel supplies in New Zealand.

*Subpart 1 of new Part 4* provides for interpretation of the *new Part 4*.

*Subpart 2 of new Part 4* imposes a minimum fuel stockholding obligation (the **stockholding obligation**) on persons that are fuel importers and wholesalers. The unit of measurement for the stockholding obligation will be days of cover for meeting daily fuel consumption. The stockholding obligation is separate from reserve fuel stocks procured by or on behalf of the Crown.

The stockholding obligation will be subject to ministerial powers to grant exemptions to industry participants.

The subpart also provides for entitlement agreements between industry participants.

The stockholding obligation will be reviewed within 5 years after it comes into effect.

*Subpart 3 of new Part 4* provides for information disclosure requirements. These are intended to facilitate better monitoring of fuel resilience and of the measures needed to promote resilience of engine fuel supplies in New Zealand.

*Subpart 4 of new Part 4* enables the High Court to impose a pecuniary penalty on an obliged person for a contravention of the stockholding obligation or an information

disclosure requirement. Proceedings under this subpart are civil proceedings. The maximum pecuniary penalty for a failure to achieve the minimum stockholding level or a contravention of an information disclosure requirement will be the greater of \$5 million and 3 times the financial gain from the breach.

*Subpart 5 of new Part 4* provides for enforceable undertakings, based on those in the Commerce Act 1986.

*Subpart 6 of new Part 4* is the regulation-making power for all of the regulations that are contemplated by *new Part 4*, for example,—

- regulations specifying additional obliged persons after the initial period (*see new section 53*):
- regulations for the stockholding obligation (*see new section 58*):
- regulations for exemptions (*see new section 59(3)*):
- regulations for information disclosure requirements (*see new section 63(3)*).

The general requirements in *new section 69(2)* (for example, relating to consultation and consideration of costs and benefits) apply to all regulations contemplated by *new Part 4*. In addition, there are requirements specified elsewhere in *new Part 4*, for example, in some of the sections listed above.

*New Part 5* provides for certain sharing of information with other public service agencies and statutory entities. For example, the Commerce Commission may obtain information under the existing Parts of the Act, and the new provisions authorise the Commission to share that information with the chief executive for the purpose of *new Part 4*.



*Hon Dr Megan Woods*

# **Fuel Industry (Improving Fuel Resilience) Amendment Bill**

Government Bill

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The Parliament of New Zealand enacts as follows:

**1 Title**

This Act is the Fuel Industry (Improving Fuel Resilience) Amendment Act **2023**.

**2 Commencement**

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(1) This Act comes into force on the date appointed by the Governor-General by Order in Council, and 1 or more orders may be made bringing different provisions into force on different dates and appointing different dates for different purposes.

(2) To the extent that this Act is not previously brought into force under **subsection (1)**, this Act comes into force on the second anniversary of the date of Royal assent. 10

(3) An Order in Council made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

**3 Principal Act**

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This Act amends the Fuel Industry Act 2020.

**4 Section 3 amended (Purpose)**

(1) In section 3, replace “purpose of this Act” with “purpose of Parts 1 to 3”.

(2) In section 3, insert as subsection (2):

(2) The purpose of **Part 4** is to promote resilience of engine fuel supplies in New Zealand. 20

**5 New section 3A inserted (Act does not apply to certain reserve fuel)**

After section 3, insert:

**3A Act does not apply to certain reserve fuel**

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This Act does not apply to—

(a) fuel that is imported, for the purpose of holding reserve fuel stock, by the Crown or under an agreement with the Crown; or

(b) any activities or any person in respect of that fuel.

**6 Section 13 amended (Regulations under this subpart)**

In section 13(2)(b)(iii), replace “this Act” with “Parts 1 to 3”.

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**7 Section 20 amended (Regulations under this subpart)**

In section 20(2)(b), replace “this Act” with “Parts 1 to 3”.

<b>8</b>	<b>Section 24 amended (Consumer information requirements may be prescribed)</b> In section 24(3)(b), replace “this Act” with “Parts 1 to 3”.	
<b>9</b>	<b>Section 25 amended (Purposes of this subpart)</b> In section 25(b), replace “this Act” with “Parts 1 to 3”.	5
<b>10</b>	<b>Section 27 amended (Information disclosure requirements may be prescribed)</b> In section 27(3)(b), replace “this Act” with “Parts 1 to 3”.	
<b>11</b>	<b>Part 3 heading amended</b> In the Part 3 heading, after “ <b>miscellaneous provisions</b> ”, insert “ <b>for purpose of Parts 1 to 3</b> ”.	10
<b>12</b>	<b>New section 50 inserted (This Part does not apply to Part 4 matters)</b> After section 49, insert:	
<b>50</b>	<b>This Part does not apply to Part 4 matters</b> This Part does not apply to any matters under <b>Part 4</b> , except as otherwise provided in <b>sections 69(3) and 70</b> .	15
<b>13</b>	<b>New Parts 4 and 5 inserted</b> After Part 3, insert:	
	<b>Part 4</b> <b>Promotion of resilience of engine fuel supplies in New Zealand</b> Subpart 1—Preliminary provision	20
<b>51</b>	<b>Interpretation</b> In this Part, unless the context otherwise requires,— <b>compliance period</b> ,— (a) during the initial period, means a calendar month: (b) after the initial period, means the compliance period specified in the regulations <b>fuel importer</b> means a fuel industry participant that imports fuel into New Zealand <b>information disclosure requirement</b> means the obligation imposed by <b>subpart 3</b> and any regulations referred to in <b>section 63</b>	25 30

**initial period**, in respect of an obligation fuel, means the period that starts with the commencement of **subpart 2** and that ends on the earlier of the following:

- (a) the date on which regulations provide that the initial period ends in respect of that type of fuel;
- (b) the end of the 5-year period referred to in **section 61** (review) 5

**minimum level of cover** means the level of engine fuel stock that represents the minimum number of days for which the fuel stock must last in order to meet the daily fuel demand or consumption, where—

- (a) the minimum number of days for the initial period is set in **section 57(3)**; and 10
- (b) the minimum number of days after the initial period is set in the regulations; and
- (c) daily fuel demand or consumption is measured by the obliged person's drawings of fuels from bulk storage facilities in New Zealand at which the obliged person has the right to draw fuel 15

**minimum stock** means engine fuel stock that is—

- (a) in a bulk storage facility in New Zealand; or
- (b) fuel cargo in a vessel within New Zealand's exclusive economic zone that is scheduled for delivery to a New Zealand port; or
- (c) otherwise counted by the regulations as minimum stock 20

**obligation fuel** has the meaning given in **section 54**

**obliged person** has the meaning given in **section 53**

**regulations** means regulations made under **subpart 6**

**stockholding obligation** or **obligation** means the obligation imposed by **subpart 2** and any regulations made for the purpose of that obligation. 25

## Subpart 2—Stockholding obligation

### *Application*

#### 52 **Purpose of this subpart**

The purpose of this subpart is to promote the resilience of engine fuel supplies by requiring certain fuel industry participants to hold a certain level of engine fuel stocks in New Zealand to mitigate the risk of fuel supply disruptions. 30

#### 53 **Persons to which obligation applies**

- (1) During the initial period, this subpart applies to every fuel industry participant (an **obliged person**) that, during a compliance period,—
  - (a) is a fuel importer of a type of obligation fuel; and 35

<p>(b) owns or operates a bulk storage facility for that type of obligation fuel or has the right to draw that type of obligation fuel at a bulk storage facility.</p> <p>(2) After the initial period, this subpart applies to every fuel industry participant (an <b>obliged person</b>)—</p> <p style="padding-left: 20px;">(a) that is of a type described in <b>subsection (1)</b>; or</p> <p style="padding-left: 20px;">(b) that is of an additional type or types specified in the regulations.</p> <p>(3) The Minister may recommend regulations for the purpose of <b>subsection (2)(b)</b> only if the Minister is satisfied that—</p> <p style="padding-left: 20px;">(a) fuel industry participants of that type or those types supply (in the form of production or import) a significant volume of fuels to the New Zealand fuel market (that is, their market share must be significant); and</p> <p style="padding-left: 20px;">(b) the fuel supplied by fuel industry participants of that type constitute a significant proportion of the energy used by the transport sector in New Zealand.</p>	<p>5</p> <p>10</p> <p>15</p>
<p><b>54 Fuel on which obligation is based</b></p> <p>This subpart applies to the following types of engine fuel (<b>obligation fuel</b>):</p> <p style="padding-left: 20px;">(a) during the initial period, the types referred to in <b>section 57(2)</b>; and</p> <p style="padding-left: 20px;">(b) after the initial period, any type or types that are specified by the regulations to be obligation fuels.</p>	<p>15</p>
<p><b>55 Disregarded fuels</b></p> <p>The following are disregarded for the purpose of this Part and the regulations:</p> <p style="padding-left: 20px;">(a) fuel held under an agreement with the Crown for the purpose of compliance by the Crown with New Zealand’s obligation, under Article 2 of the International Energy Agreement (within the meaning given in section 2 of the International Energy Agreement Act 1976), to maintain the emergency reserve commitment set out in that Article:</p> <p style="padding-left: 20px;">(b) fuel imported for consumption by the Crown (for example, by the New Zealand Defence Force).</p>	<p>20</p> <p>25</p>
<p><i>Imposition of stockholding obligation</i></p>	
<p><b>56 Imposition of obligation</b></p> <p>Each obliged person must maintain minimum stock, of each type of obligation fuel in respect of which it is an obliged person, at a level that is sufficient to sustain the minimum level of cover required by this Part and the regulations.</p>	<p>30</p>
<p><b>57 Initial obligation</b></p> <p>(1) This section sets the stockholding obligation for the initial period.</p>	<p>35</p>

- (2) The types of obligation fuel to which the initial stockholding obligation applies are—
- (a) diesel (within the meaning of regulation 5(1) of the Engine Fuel Specifications Regulations 2011):
  - (b) petrol (within the meaning of regulation 5(1) of the Engine Fuel Specifications Regulations 2011): 5
  - (c) aviation kerosene (being kerosene-type fuel that is used in aviation turbine engines).
- (3) The required number of days of demand or consumption, for the purpose of the minimum level of cover, is— 10
- (a) 21 for diesel:
  - (b) 28 for petrol:
  - (c) 24 for aviation kerosene.
- (4) The formula for translating minimum level of cover to the required minimum stockholding volume for each obliged person and each fuel type is— 15
- $$a = b \times c$$
- where—
- a is the obliged person’s stockholding obligation (that is, the minimum stock of the fuel type (measured in thousands of litres) that the person must maintain for the compliance period to sustain the minimum level of cover required by this Part and the regulations) 20
  - b is the required number of days that is referred to in **subsection (3)** for the fuel type and for the purpose of the minimum level of cover
  - c is the obliged person’s average daily demand or consumption (that is, the obliged person’s average daily drawings from bulk storage facilities in New Zealand at which the obliged person has the right to draw fuel, during the 12 months immediately before the compliance period, of the fuel type (measured in thousands of litres per day)). 25
- 58 Regulations relating to stockholding obligation**
- (1) The regulations may provide for matters relating to the stockholding obligation, including all or any of the following matters: 30
- (a) for each type of fuel,—
    - (i) the methodologies for calculating each obliged person’s stockholding obligation for each compliance period; and
    - (ii) when the initial period ends: 35
  - (b) for each period after the initial period,—

(i)	the type or types of engine fuel that are obligation fuels (which may be prescribed by reference to either or all of the circumstances or characteristics of the fuel or other matters):	
(ii)	the type or types of fuel industry participant that are obliged persons in respect of obligation fuel (in which case, <b>section 53(3)</b> applies):	5
(iii)	matters relating to the minimum level of cover required.	
(2)	The regulations may provide—	
(a)	different obligations for different types of things (for example, different stockholding levels for different fuels at different locations or for different periods); and	10
(b)	for recalculation of obligations (for example, if a person ceases to be an obliged person, for the recalculation of other persons' obligations).	
(3)	The Minister may recommend regulations for matters referred to in this section only if—	15
(a)	the Minister has had regard to the resilience of supplies of each type of obligation fuel; and	
(b)	the Minister has had regard to the current or recent commercial stockholding levels for that type of fuel; and	
(c)	the Minister considers that the stockholding obligation balances the following objectives:	20
(i)	that there are sufficient engine fuel stocks available in New Zealand to meet demand and to adequately manage the impacts of plausible fuel supply disruption scenarios; and	
(ii)	that the economic costs associated with complying with the stockholding obligation are not disproportionate.	25
<b>59</b>	<b>Exemptions from stockholding obligation</b>	
(1)	The Minister may exempt by notice an obliged person, or a class of obliged persons, from all or any of their stockholding obligation.	
(2)	The Minister may grant the exemption only if—	30
(a)	the Minister is satisfied that an event—	
(i)	has caused significant disruption to engine fuel supplies or stocks (for example, a natural disaster has affected fuel storage facilities or a crisis has affected international shipping routes); and	
(ii)	prevents the obliged person or persons from complying with the obligation; and	35
(b)	the Minister has taken into account—	
(i)	the impact of the event on fuel imports and fuel storage capacity; and	

<ul style="list-style-type: none"> <li>(ii) the duration of the event; and</li> <li>(iii) the level of control of the fuel importer over the event; and</li> <li>(iv) the time required to achieve compliance with the obligation; and</li> <li>(v) the impact on fuel resilience in regions; and</li> </ul>	5
<ul style="list-style-type: none"> <li>(c) the Minister is satisfied that— <ul style="list-style-type: none"> <li>(i) there is good reason for granting the exemption that outweighs the interests of the public in having the obligation met; and</li> <li>(ii) the extent of the exemption is not broader than is reasonably necessary to address the matters that gave rise to the exemption.</li> </ul> </li> </ul>	10
<ul style="list-style-type: none"> <li>(3) The regulations may prescribe— <ul style="list-style-type: none"> <li>(a) the circumstances in which exemptions may be granted:</li> <li>(b) matters related to the process for exemptions:</li> <li>(c) the maximum period during which an exemption may continue in force:</li> <li>(d) when and how other obliged persons' stockholding obligations may be recalculated as a result of an exemption.</li> </ul> </li> </ul>	15
<ul style="list-style-type: none"> <li>(4) The Minister may grant the exemption unconditionally or subject to any conditions that the Minister may prescribe in the notice.</li> </ul>	15
<ul style="list-style-type: none"> <li>(5) An exemption granted under this section is secondary legislation (<i>see</i> Part 3 of the Legislation Act 2019 for publication requirements).</li> </ul>	15
<i>Entitlement agreements</i>	
<b>60 Entitlement agreements as mechanism for meeting obligations</b>	20
<ul style="list-style-type: none"> <li>(1) This section applies if an obliged person enters into an agreement with another obliged person that records a transfer of the right to count an amount of fuel stocks for the purpose of complying with a stockholding obligation.</li> </ul>	25
<ul style="list-style-type: none"> <li>(2) Only the transferee of the right can count the amount towards compliance with the stockholding obligation after the transfer.</li> </ul>	25
<ul style="list-style-type: none"> <li>(3) The regulations may set requirements related to entitlement agreements and their use.</li> </ul>	25
<i>Review</i>	
<b>61 Review</b>	30
<ul style="list-style-type: none"> <li>(1) The Minister must review the stockholding obligation within 5 years after the commencement of this subpart.</li> </ul>	35
<ul style="list-style-type: none"> <li>(2) The review of the stockholding obligation must take into account the following considerations: <ul style="list-style-type: none"> <li>(a) the Government's emissions budget and emissions reduction plan:</li> <li>(b) fuel demand in New Zealand:</li> </ul> </li> </ul>	35

- (c) the fuel mix for the transport fleet:
- (d) any relevant data and findings on the resilience of supply chains, such as national and regional fuel stocks data and reports on resilience of international and domestic fuel supply chains:
- (e) domestic fuel production capacity.

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Subpart 3—Information disclosure requirements for purpose of this Part

**62 Obligation to comply with information disclosure requirements**

- (1) Every fuel industry participant to which requirements prescribed by the regulations apply must comply with those requirements.
- (2) Without limiting **subsection (1)**, a fuel industry participant must disclose information to the chief executive in any circumstances prescribed by the regulations.
- (3) The fuel industry participant must disclose the information in any form and manner specified by the chief executive.

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Compare: 2020 No 60 s 26

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**63 Information disclosure requirements may be prescribed**

- (1) The regulations may prescribe requirements relating to record keeping, and the retention and disclosure of information, about the resilience of engine fuel supplies in New Zealand, including—
  - (a) fuel stocks of industry participants identified in regulations and obliged persons at national, regional, and bulk storage facility levels:
  - (b) international supply chains:
  - (c) contingency arrangements:
  - (d) any other information considered necessary for planning and implementing the stockholding obligation.
- (2) In particular, the regulations may prescribe—
  - (a) the kinds of fuel industry participants, the engine fuels, and other matters that the regulations apply to:
  - (b) the information that must be recorded and retained:
  - (c) the methodologies that must be applied in recording the information:
  - (d) the circumstances in which information must be disclosed to the chief executive (for example, when requested by the chief executive, at a specified time, or on the occurrence of a specified event):
  - (e) requirements for the contents of information disclosed to the chief executive to be independently assessed for accuracy and certified by an auditor who is approved by the chief executive (in the prescribed manner, if any, for that purpose):

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- (f) requirements relating to the publication of information that is required to be disclosed to the chief executive.
- (3) The Minister may recommend regulations only if the Minister has had regard to the need for—
  - (a) transparency and timeliness of information about fuel industry participants' fuel stockholding levels at national, regional, and bulk storage facility levels and at specific locations (such as Auckland International Airport): 5
  - (b) information required for assessing the adequacy of fuel stockholding levels in New Zealand for meeting New Zealand demand in a plausible fuel supply disruption scenario. 10

Compare: 2020 No 60 s 27

**64 Publication of analysis or summary**

The chief executive may,—

- (a) for the purpose of this Part, analyse and summarise any information disclosed to them under this subpart; and 15
- (b) publish any resulting analysis or summary.

Compare: 2020 No 60 s 28

**Subpart 4—Pecuniary penalties under this Part**

**65 Pecuniary penalties under this Part** 20

- (1) The High Court may, on the application of the chief executive, order a person to pay to the Crown a civil pecuniary penalty if satisfied that the person—
  - (a) has contravened any of the provisions of the following:
    - (i) the stockholding obligation:
    - (ii) an information disclosure requirement; or 25
  - (b) has attempted to contravene any of those provisions; or
  - (c) has aided, abetted, counselled, or procured any other person to contravene any of those provisions; or
  - (d) has induced, or attempted to induce, any other person, whether by threats or promises or otherwise, to contravene any of those provisions; or 30
  - (e) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by any other person of any of those provisions; or
  - (f) has conspired with any other person to contravene any of those provisions. 35
- (2) The amount of any pecuniary penalty must not exceed,—
  - (a) in the case of an individual, \$500,000 for each act or omission; or

- (b) in any other case, the greater of the following for each act or omission:
- (i) \$5 million:
  - (ii) either,—
    - (A) if it can be readily ascertained and if the court is satisfied that the contravention occurred in the course of producing a commercial gain, 3 times the value of any commercial gain resulting from the contravention; or
    - (B) if the commercial gain cannot readily be ascertained, 10% of the turnover of the person and all its interconnected bodies corporate (if any) in each accounting period in which the contravention occurred.
- (3) In determining an appropriate penalty under this subpart, the court must have regard to all matters referred to in section 30(6).
- (4) Sections 30(7) and (8), 31, 34, and 40(c) apply with any necessary modifications.

### Subpart 5—Enforceable undertakings

#### **66 Chief executive may accept undertakings**

- (1) The chief executive may accept a written undertaking given by, or on behalf of, a person in connection with any matter relating to the enforcement of this Part.
- (2) The person may withdraw or vary the undertaking with the consent of the chief executive.
- Compare: 1986 No 5 s 74A

#### **67 Matters included in undertakings**

- (1) An undertaking under **section 66** may, without limitation, include either or both of the following:
- (a) an undertaking to take action to avoid, remedy, or mitigate any actual or likely adverse effects arising from a contravention, or possible contravention, of this Part:
  - (b) an undertaking to pay to the chief executive all or part of the chief executive's costs incurred in investigating, or bringing proceedings in relation to, a contravention, or possible contravention, of this Part.
- (2) If the chief executive accepts an undertaking that involves payment of the chief executive's costs, the chief executive must make the following information publicly available:
- (a) the amount of the chief executive's costs that has been undertaken to be paid; and
  - (b) a brief description of the circumstances and nature of the contravention or possible contravention of this Part to which the undertaking relates.

- (3) In this section, a **contravention** means any of the following:
- (a) an actual contravention:
  - (b) aiding, abetting, counselling, or procuring a contravention:
  - (c) inducing a contravention, whether by threats, promises, or otherwise:
  - (d) being in any way, directly or indirectly, knowingly concerned in, or party to, a contravention: 5
  - (e) conspiring with any other person in a contravention.
- Compare: 1986 No 5 s 74B
- 68 Enforcement of undertakings**
- (1) If the chief executive considers that a person has breached an undertaking given under **section 66**, the chief executive may apply to the High Court for an order under **subsection (2)**. 10
- (2) The court may make any 1 or more of the following orders if it is satisfied that the person has breached a term of the undertaking:
- (a) an order directing the person to comply with the term: 15
  - (b) an order directing the person to pay to the Crown an amount not exceeding the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach.
- Compare: 1986 No 5 s 74C
- Subpart 6—Regulations and other miscellaneous provisions 20
- 69 Regulations under this Part**
- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations—
- (a) providing for anything that this Part says may or must be provided for by regulations: 25
  - (b) providing for anything incidental that is necessary for carrying out, or giving full effect to, this Part.
- (2) The Minister may recommend regulations under this Part only if—
- (a) the Minister has consulted any fuel industry participants that the Minister considers are likely to be significantly affected by the regulations; and 30
  - (b) the Minister is satisfied that the regulations are necessary or desirable after having regard to the purpose of this Part and to the relevant costs and benefits.
- (3) Section 48 applies to any regulations made under this Part. 35

- (4) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Compare: 2002 No 40 s 168(1)(k), (l), (2)

**70 Chief executive may approve forms**

Section 49 applies with any necessary modifications.

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**Part 5  
General provisions**

*Information sharing*

**71 Information sharing between Commission and chief executive**

- (1) The Commission and the chief executive, and any other person with functions, powers, or duties under this Act, may use any information provided under this Act, or a copy of any document provided under this Act, for any purpose of this Act.

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- (2) The chief executive may provide to the Commission any information, or a copy of any document, that the chief executive—

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(a) holds in relation to the exercise of powers, or the performance of functions and duties, in respect of **Part 4**; and

(b) considers may assist the Commission for the purpose of Parts 1 to 3.

- (3) The Commission may provide to the chief executive any information, or a copy of any document, that the Commission—

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(a) holds in relation to the exercise of powers, or the performance of functions and duties, in respect of Parts 1 to 3; and

(b) considers may assist the chief executive for the purpose of **Part 4**.

- (4) The Commission or the chief executive must not provide any information or document under this section unless satisfied that appropriate protections are or will be in place to maintain the confidentiality of the information or document (including information that is personal information within the meaning of the Privacy Act 2020).

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**72 Sharing of information and documents with other entities**

- (1) The chief executive may provide to a public service agency or a statutory entity (other than the Commission) any information, or a copy of any document, that the chief executive—

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(a) holds in relation to the performance or exercise of the chief executive's functions, powers, or duties under this Act or any other legislation; and

- (b) considers may assist the public service agency or statutory entity in the performance or exercise of its functions, powers, or duties under any legislation.
- (2) The chief executive may provide information, or a copy of a document, under this section only if satisfied that— 5
- (a) doing so will not substantially affect the performance of their functions; and
- (b) appropriate protections are or will be in place to maintain the confidentiality of the information or document provided (in particular, information that is personal information within the meaning of the Privacy Act 2020). 10
- (3) The chief executive may use any information, or a copy of any document, in the chief executive’s performance or exercise of their functions, powers, or duties under any legislation if the information or copy is provided to the chief executive by a public service agency or a statutory entity (other than the Commission). 15
- (4) In this section,—
- public service agency** has the meaning given in section 5 of the Public Service Act 2020
- statutory entity** means an entity or office named in Schedule 1 of the Crown Entities Act 2004. 20
- Compare: 1986 No 5 s 99AA
- 73 Effect of information sharing provisions**
- (1) **Sections 71 and 72** apply despite anything to the contrary in any contract, deed, or document. 25
- (2) Nothing in **section 71 or 72** limits—
- (a) the Privacy Act 2020; or
- (b) section 99AA of the Commerce Act 1986; or
- (c) any provision of this Act or any other legislation that allows the use or disclosure of information (for example, section 17 of the Crown Entities Act 2004). 30